

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARELIS ARAUJO et al.,	:	
	:	20 Civ. 7032 (LGS)
Plaintiffs,	:	
	:	
-against-	:	<u>ORDER</u>
	:	
NEW YORK CITY DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Defendant.	:	
-----X	:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiffs claim that Defendant has not timely made agreed-upon pendency payments for several student-Plaintiffs pursuant to the Individuals With Disabilities in Education Act (“IDEA”) and this Court’s Orders (Dkt. Nos. 23, 61) and requests Defendant be directed to make allegedly outstanding payments by a date certain (Dkt. No. 63).

WHEREAS, Defendant represents that it has followed its process for making payments directly to the students’ educational institution on a quarterly basis (Dkt. No. 66). Pursuant to that process, Defendant authorizes payments, which are made by the City of New York approximately 30 days later. Plaintiffs do not dispute that Defendant is following its normal practice for disbursing payments directly to the students’ school, but cites inapposite caselaw stating that Defendant may not withhold pendency funding until after the conclusion of Plaintiffs’ challenges to their Individualized Education Plans (“IEPs”). Defendant is not withholding such funding, but is making payments on an approximately quarterly basis. Some administrative delay in disbursement not constitute noncompliance with the IDEA’s requirement for pendency funding or the Court’s orders directing such funding be provided.

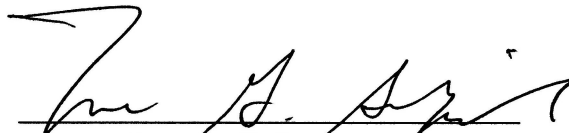
WHEREAS, Plaintiffs filed a reply -- without leave and not in accordance with the Individual Rules -- citing affidavits of the Director of Defendant’s Impartial Hearing Order

Implementation Unit. Plaintiffs claim those affidavits demonstrate that Defendant is not providing pendency funding per its stated procedures. Those affidavits merely state that Defendant makes periodic payments directly to schools during the pendency of an IEP dispute -- what Defendant is doing here. Accordingly, it is hereby

ORDERED that Plaintiffs' request for an order directing provision of pendency funding for individual students by a date certain is **denied**.

Both parties are again reminded of their obligation to meet and confer in good faith to resolve issues, including logistical issues around the provision of ordered pendency funding.

Dated: May 4, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE